

State of Arizona  
House of Representatives  
Forty-seventh Legislature  
First Regular Session  
2005

CHAPTER 165

**HOUSE BILL 2633**

AN ACT

AMENDING SECTIONS 12-1578 AND 20-1131, ARIZONA REVISED STATUTES; REPEALING SECTION 20-1131.01, ARIZONA REVISED STATUTES; AMENDING SECTION 33-1126, ARIZONA REVISED STATUTES; RELATING TO PERSONAL PROPERTY EXEMPTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)



1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-1578, Arizona Revised Statutes, is amended to  
3 read:

4 12-1578. Limitations on transfers by garnishee after service;  
5 replevin by judgment debtor

6 A. From and after the service of all of the documents required to be  
7 served pursuant to section 12-1574 the garnishee shall not pay to the  
8 judgment debtor any monies or deliver to him any personal property which is  
9 not exempt, and the garnishee, if a corporation in which the judgment debtor  
10 is alleged to be the owner of shares or to have an interest, shall not permit  
11 or recognize any sale or transfer of the judgment debtor's shares or  
12 interest, if it is within the legal power of the garnishee to do so. Any  
13 such payment, delivery, sale or transfer is void and of no effect as to so  
14 much of the monies, personal property, shares or interest as is necessary to  
15 satisfy the judgment creditor's demand, except that this provision shall not  
16 void or impair the rights of a bona fide transferee, for value and without  
17 notice of the garnishment, of negotiable instruments, documents of title,  
18 corporate stock or securities, or other documents or instruments which embody  
19 legal rights transferable only by transfer of the documents or instruments  
20 themselves, unless the document or instrument is held by the garnishee at the  
21 time of service of the writ of garnishment.

22 B. A financial institution shall not withhold from the judgment debtor  
23 the amount set forth as exempt pursuant to section 33-1126, subsection A,  
24 paragraph 8- 9, unless ordered by the court to do so after a hearing pursuant  
25 to section 12-1580.

26 C. The judgment debtor may at any time before judgment replevy any  
27 property garnished by giving bond to be approved and filed in the action by  
28 the officer who issued the writ of garnishment, in double the amount of the  
29 judgment creditor's debt, or, at the judgment debtor's option, by giving bond  
30 for the value of the property garnished as determined by the court, justice  
31 of the peace or city or town magistrate, and conditioned upon the payment of  
32 any judgment that may be given against the garnishee in the action or for  
33 payment of the value of the property garnished.

34 D. When the judgment debtor gives bond, he may make any defense which  
35 the garnishee could make in such action.

36 E. If judgment is given in favor of the judgment creditor it shall be  
37 against the judgment debtor and the sureties on the replevin bond for the  
38 amount of such judgment.

39 Sec. 2. Section 20-1131, Arizona Revised Statutes, is amended to read:

40 20-1131. Exemption of life insurance proceeds and cash values  
41 from creditors

42 A. If a policy of life insurance is effected by any person on the  
43 person's own life or on another life in favor of another person ~~other than~~  
44 himself having an insurable interest in the policy, or made payable by  
45 assignment, change of beneficiary or other means to a third person, the

1 lawful beneficiary or such third person, other than the person effecting the  
2 insurance or the person's legal representatives, is entitled to its proceeds  
3 against the creditors and representatives of the person effecting the  
4 insurance.

5 B. Subject to the statute of limitations, the amount of any premiums  
6 for insurance paid in fraud of creditors, with interest, shall inure to their  
7 benefit from the proceeds of the policy, but the insurer issuing the policy  
8 shall be discharged of all liability on the policy by payment of the proceeds  
9 in accordance with its terms, unless before payment the insurer received  
10 written notice by or in behalf of some creditor, with specification of the  
11 amount claimed, claiming to recover for certain premiums paid in fraud of  
12 creditors.

13 C. For the purposes of subsection A, a policy shall also be deemed to  
14 be payable to a person other than the insured if and to the extent that a  
15 facility-of-payment clause or similar clause in the policy permits the  
16 insurer to discharge its obligation after the death of the individual insured  
17 by paying the death benefits to a person as permitted by the clause.

18 D. If, for a continuous, unexpired period of two years, a policy of  
19 life insurance has named as beneficiary the insured's surviving spouse,  
20 child, parent, brother, sister or any other dependent family member, then, in  
21 event of bankruptcy OR IN ANY PROCEEDING before any court in this state, the  
22 cash surrender value of the insurance, in the proportion that the policy  
23 names any such beneficiary, shall be exempt from claims and demands of all  
24 creditors, other than a creditor to whom the policy has been PLEDGED OR  
25 assigned, . ~~The exemption on all policies of life insurance relative to any~~  
26 ~~debtor shall not exceed twenty-five thousand dollars~~ AND except that, subject  
27 to the statute of limitations, the amount of any premiums ~~paid in fraud of~~  
28 ~~creditors~~ WHICH ARE RECOVERABLE OR AVOIDABLE BY A CREDITOR PURSUANT TO TITLE  
29 44, CHAPTER 8, ARTICLE 1, with interest, shall inure to their benefit from  
30 the cash surrender value. For the purposes of this subsection, "dependent"  
31 means a family member who is dependent on the insured for not less than half  
32 support.

33 Sec. 3. Repeal

34 Section 20-1131.01, Arizona Revised Statutes, is repealed.

35 Sec. 4. Section 33-1126, Arizona Revised Statutes, is amended to read:

36 33-1126. Money benefits or proceeds; exception

37 A. The following property of a debtor shall be exempt from execution,  
38 attachment or sale on any process issued from any court:

39 1. All money received by or payable to a surviving spouse or child  
40 upon the life of a deceased spouse, parent or legal guardian, not exceeding  
41 twenty thousand dollars.

42 2. The earnings of the minor child of a debtor or the proceeds thereof  
43 by reason of any liability of such debtor not contracted for the special  
44 benefit of such minor child.

1        3. All monies received by or payable to a person entitled to receive  
2 child support or spousal maintenance pursuant to a court order.

3        4. All money, proceeds or benefits of any kind to be paid in a lump  
4 sum or to be rendered on a periodic or installment basis to the insured or  
5 any beneficiary under any policy of health, accident or disability insurance  
6 or any similar plan or program of benefits in use by any employer, except for  
7 premiums payable on such policy or debt of the insured secured by a pledge,  
8 and except for collection of any debt or obligation for which the insured or  
9 beneficiary has been paid under the plan or policy and except for payment of  
10 amounts ordered for support of a person from proceeds and benefits furnished  
11 in lieu of earnings which would have been subject to such order and subject  
12 to any exemption applicable to earnings so replaced.

13        5. All money arising from any claim for the destruction of, or damage  
14 to, exempt property and all proceeds or benefits of any kind arising from  
15 fire or other insurance upon any property exempt under this article.

16        6. The cash surrender value of life insurance policies where for a  
17 continuous unexpired period of two years such policies have been owned by a  
18 debtor and have named as beneficiary the debtor's surviving spouse, child,  
19 parent, brother or sister, or any other dependent family member, in the  
20 proportion that the policy names any such beneficiary, ~~not to exceed~~  
21 ~~twenty-five thousand dollars in cash surrender value~~, except that, subject to  
22 the statute of limitations, the amount of any premium ~~paid in fraud of~~  
23 ~~creditors~~ WHICH IS RECOVERABLE OR AVOIDABLE BY A CREDITOR PURSUANT TO TITLE  
24 44, CHAPTER 8, ARTICLE 1, with interest thereon, shall ~~inure to their benefit~~  
25 ~~from such cash surrender value~~ NOT BE EXEMPT. THE EXEMPTION PROVIDED BY THIS  
26 PARAGRAPH DOES NOT APPLY TO A CLAIM FOR THE PAYMENT OF A DEBT OF THE INSURED  
27 OR BENEFICIARY THAT IS SECURED BY A PLEDGE OR ASSIGNMENT OF THE CASH VALUE OF  
28 THE INSURANCE POLICY OR THE PROCEEDS OF THE POLICY. ~~In~~ FOR THE PURPOSES OF  
29 this paragraph "dependent" means a family member who is dependent ~~upon~~ ON the  
30 insured debtor for not less than half support.

31        7. AN ANNUITY CONTRACT WHERE FOR A CONTINUOUS UNEXPIRED PERIOD OF TWO  
32 YEARS SUCH CONTRACT HAS BEEN OWNED BY A DEBTOR AND HAS NAMED AS BENEFICIARY  
33 THE DEBTOR, DEBTOR'S SURVIVING SPOUSE, CHILD, PARENT, BROTHER OR SISTER, OR  
34 ANY OTHER DEPENDENT FAMILY MEMBER, EXCEPT THAT, SUBJECT TO THE STATUTE OF  
35 LIMITATIONS, THE AMOUNT OF ANY PREMIUM, PAYMENT OR DEPOSIT WITH RESPECT TO  
36 SUCH CONTRACT IS RECOVERABLE OR AVOIDABLE BY A CREDITOR PURSUANT TO TITLE 44,  
37 CHAPTER 8, ARTICLE 1 SHALL NOT BE EXEMPT. THE EXEMPTION PROVIDED BY THIS  
38 PARAGRAPH DOES NOT APPLY TO A CLAIM FOR A PAYMENT OF A DEBT OF THE ANNUITANT  
39 OR BENEFICIARY THAT IS SECURED BY A PLEDGE OR ASSIGNMENT OF THE CONTRACT OR  
40 ITS PROCEEDS. FOR THE PURPOSES OF THIS PARAGRAPH, "DEPENDENT" MEANS A FAMILY  
41 MEMBER WHO IS DEPENDENT ON THE DEBTOR FOR NOT LESS THAN HALF SUPPORT.

42        ~~7.~~ 8. Any claim for damages recoverable by any person by reason of  
43 any levy upon or sale under execution of his exempt personal property or by  
44 reason of the wrongful taking or detention of such property by any person,  
45 and the judgment recovered for such damages.

1        ~~B.~~ 9. A total of one hundred fifty dollars held in a single account  
2 in any one financial institution as defined by section 6-101. The property  
3 declared exempt by this paragraph is not exempt from normal service charges  
4 assessed against the account by the financial institution at which the  
5 account is carried.

6        ~~B. Subsection A of this section does not apply to annuities, nor to~~  
7 ~~cash surrender values increased by premium payments within two years in~~  
8 ~~excess of the average annual premium paid during the previous three years.~~

9        ~~C.~~ B. Any money or other assets payable to a participant in or  
10 beneficiary of, or any interest of any participant or beneficiary in, a  
11 retirement plan under section 401(a), 403(a), 403(b), 408, 408A or 409 or a  
12 deferred compensation plan under section 457 of the United States internal  
13 revenue code of 1986, as amended, shall be exempt from any and all claims of  
14 creditors of the beneficiary or participant. This subsection shall not apply  
15 to any of the following:

16        1. An alternate payee under a qualified domestic relations order, as  
17 defined in section 414(p) of the United States internal revenue code of 1986,  
18 as amended. The interest of any and all alternate payees is exempt from any  
19 and all claims of any creditor of the alternate payee.

20        2. Amounts contributed within one hundred twenty days before a debtor  
21 files for bankruptcy.

22        3. The assets of bankruptcy proceedings filed before July 1, 1987.

23        ~~D.~~ C. Any person the age of eighteen years or over, married or  
24 single, who resides within this state and who does not exercise the homestead  
25 exemption under article 1 of this chapter may claim as a personal property  
26 homestead exempt from all process prepaid rent, including security deposits  
27 as provided in section 33-1321, subsection A, for the claimant's residence,  
28 not exceeding the lesser of one thousand dollars or one and one-half months'  
29 rent.

30        ~~E.~~ D. Nothing in this section exempts property from orders which are  
31 the result of a judgment for arrearages of child support or for a child  
32 support debt.

33        Sec. 5. Emergency

34        This act is an emergency measure that is necessary to preserve the  
35 public peace, health or safety and is operative immediately as provided by  
36 law.

APPROVED BY THE GOVERNOR APRIL 20, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 20, 2005.

Passed the House March 8, 2005,

Passed the Senate April 12, 2005,

by the following vote: 59 Ayes,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting  
With Emergency  
Speaker of the House

Norman L. Moore  
Chief Clerk of the House

1 Nays, 0 Not Voting  
With Emergency  
President of the Senate

Chairman Dillington  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.  
\_\_\_\_\_  
Secretary to the Governor

Approved this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_, 20\_\_\_\_,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.  
\_\_\_\_\_  
Governor of Arizona

H.B. 2633

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE


This Bill was received by the Secretary of State  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.  
\_\_\_\_\_  
Secretary of State

HOUSE CONCURS IN SENATE  
AMENDMENTS AND FINAL PASSAGE

April 14, 2005,

by the following vote: 56 Ayes,

0 Nays, 4 Not Voting  
With Emergency

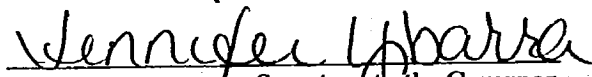
  
\_\_\_\_\_  
Speaker of the House  
Pro Tempore  
\_\_\_\_\_  
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

15th day of April, 2005

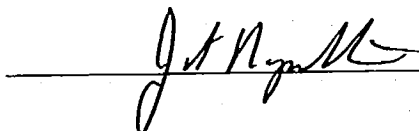
at 9:00 o'clock a. M.

  
\_\_\_\_\_  
Secretary to the Governor

Approved this 20 day of

April, 2005,

at 2:00 o'clock P. M.

  
\_\_\_\_\_  
Governor of Arizona

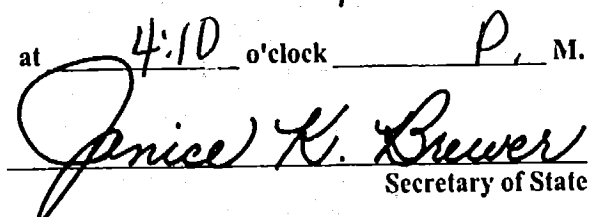
H.B. 2633

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 20 day of April, 2005,

at 4:10 o'clock P. M.

  
\_\_\_\_\_  
Secretary of State